

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JEFFREY CHEN,

Plaintiff,

v.

CITY OF MEDINA, et al.,

Defendants.

C11-2119 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The deferred portions of plaintiff's motion for partial summary judgment, docket no. 168, are DENIED. With respect to the defenses of "after-acquired evidence," "unclean hands," and "good faith," the Court concludes that genuine issues of material fact exist.

(2) The deferred portions of defendants' motions for summary judgment, docket nos. 157 and 166, are GRANTED in part and DENIED in part, as follows:

(a) Plaintiff's claim of hostile work environment pursuant to 42 U.S.C. §§ 1981 & 2000e-2 and the Washington Law Against Discrimination, RCW 49.60, is DISMISSED with prejudice. The Court will issue a separate order explaining its reasoning, but clarifies here that its ruling is solely that the alleged statements of defendant Donna Hanson and others are not, as a matter of law, sufficiently "severe" or "pervasive" to support a claim for hostile work environment. Whether such statements might be admissible at trial for other purposes will be addressed at a later date.

(b) The following claims are also DISMISSED with prejudice: (i) for wrongful termination in breach of employment policy; (ii) under 42 U.S.C. § 1983 for violation of procedural due process; (iii) under 42 U.S.C. § 1983 for retaliation in violation of the First Amendment; (iv) for retaliatory discharge in violation of

1 RCW 49.60.210(2); and (v) for discharge in violation of public policy. The Court  
2 will issue an order explaining these rulings.

3 (c) With respect to plaintiff's claim under 42 U.S.C. § 1983 for  
4 violation of substantive due process, the Court concludes that genuine issues of  
5 material fact exist, and defendants' motions for summary judgment are DENIED  
6 as to such claim. The Ninth Circuit has held that "a plaintiff can make out a  
7 substantive due process claim if she is unable to pursue an occupation and this  
8 inability is caused by government actions that were arbitrary and lacking a rational  
9 basis." *Engquist v. Ore. Dep't of Agric.*, 478 F.3d 985, 997 (9th Cir. 2007), *aff'd*  
10 *on other grounds*, 553 U.S. 591 (2008). Here, drawing all reasonable inferences in  
11 favor of plaintiff, as the non-moving party, the Court is persuaded that triable  
12 issues exist as to whether plaintiff would find obtaining another position as a  
13 police officer "virtually impossible," as required by *Engquist*, and whether  
14 defendants' reason for discharging plaintiff was racial animus, *i.e.*, was arbitrary  
15 and lacking a rational basis.

16 (3) In light of the Court's rulings, the following claims will proceed to trial  
17 against defendants Donna Hanson and City of Medina: (a) disparate treatment based on  
18 race or national origin pursuant to (i) 42 U.S.C. § 1981, (ii) 42 U.S.C. § 1983 (equal  
19 protection), (iii) 42 U.S.C. § 2000e-2, and (iv) Washington Law Against Discrimination,  
20 RCW 49.60.030 & .180; and (b) violation of substantive due process brought under 42  
21 U.S.C. § 1983. With regard to the disparate treatment claim, the adverse employment  
22 actions at issue are: (i) absence of a written employment contract; (ii) an allegedly forced  
23 resignation on December 17, 2010; and (iii) discharge on April 27, 2011.

14 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of  
15 record.

16 Dated this 16th day of January, 2013.

17 William M. McCool  
18 Clerk

19 s/Claudia Hawney  
20 Deputy Clerk